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Attorneys Specially Appearing for Defendant
 Fresh 'N Healthy, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

ASA FARMS, INC., a California
 corporation and BRAGA RANCH,

Plaintiff(s).

v.

FRESH 'N HEALTHY, INC., a Delaware
 corporation, MARK WILLIAMS, an
 individual; JACK PARSON, an individual;
 STEVEN CINELLI, an individual; CHAD
 HAGEN, an individual, SANTOS
 MARTINEZ, an individual; DON BEAM,
 an individual; DARRYL NICHOLSON, an
 individual; RICHARD MAY, an individual;
 THOMAS COLOGNA, an individual;
 PRESTWICK PARTNERS, LLC, a
 California limited liability company;
 SOLSTICE VENTURE PARTNERS, LLC,
 a business entity form unknown;
 VFINANCE INVESTMENTS, a business
 entity form unknown; FMP VINEYARD,
 LLC, a New Mexico limited liability
 company; BUTTONWOOD OPTION, LLC,
 a business entity form unknown; DW, LLC,
 a business entity form unknown; M
 SOLAZZO TRUST 2002; P. SOLAZZO
 1998; GIBBONS FAMILY TRUST;
 BIXLER TRUST; STEIGERWALD TRUST
 and CARTER TRUST, and DOES 1 through
 50, inclusive,

Defendant(s).

Case No. C08-00122 PVT

**DECLARATION OF RUSSELL K. BURBANK IN
 SUPPORT OF RESPONSE TO OBJECTION TO
 STIPULATION MODIFYING PRELIMINARY
 INJUNCTION**

1 I, RUSSELL K. BURBANK, declare:

2 1. I am a partner in BURR, PILGER & MAYER, LLP ("BPM") and am authorized to
3 make this declaration by the Defendant Fresh 'N Healthy, Inc., (the "Defendant") on its behalf in
4 response to the OBJECTION TO THE STIPULATION MODIFYING PRELIMINARY INJUNCTION filed by
5 proposed plaintiff in intervention Oceano Packing Co., LLC. I have personal knowledge of the facts
6 set forth in this declaration, except those stated on information and belief and as to those matters I
7 believe them to be true. If called upon as a witness, I would and could competently testify as
8 follows:

9 2. BPM was retained by the Defendant in connection with financial difficulties
10 encountered by the Defendant and the resultant necessity to wind-down and close its business. BPM
11 is an organization providing personal and business accounting, tax and other related professional
12 services to its clients, including business consulting services. Of relevance here, BPM's business
13 consulting services consist of business valuation, litigation consulting, bankruptcy, due diligence,
14 liquidation, turn-around and equity development. BPM provides integrated services to maximize a
15 company's liquidation value. I have over 30 years general business experience and over 20 years of
16 corporate renewal and process improvement experience, serving a variety of public and private
17 firms. I have also acted as financial advisor to institutions. I estimate that I have participated in
18 overseeing and handling over 20 assignments involving liquidation of a company's assets to
19 maximize the value for its creditors and owners.

20 3. I was retained by the Defendant on November 28, 2007 to advise the company of the
21 potential of turnaround and failing that to assist in the liquidation of its assets for the benefit of
22 creditors. Upon retention, BPM analyzed the company's financial status, including its debt structure
23 and assets. Its major secured creditor was Comerica Bank ("Comerica"), to which the Defendant
24 owed over \$4,000,000 pursuant to a loan agreement. The debt was secured by a security agreement
25 which was perfected by UCC-1 filing with the Secretary of the State.

26 4. The Defendant has numerous farming and produce processing packing equipment for
27 use in its business. Due to its financial difficulties, the Defendant was forced to terminate its
28 operations. In the process of winding down, the Defendant has returned several pieces of leased

1 equipment to the lessors, resulting in the dismantling of certain integrated processing equipment
2 which necessarily affects negatively the value of that equipment. With Comerica's consent and
3 cooperation, BPM initiated an extensive marketing effort with respect to the sale of the Defendant's
4 remaining assets, including its processing equipment. In an effort to ensure that this equipment was
5 sold at a fair value, BPM solicited eight (8) fresh produce processors who we believed were
6 competitors of the Defendant and who we thought might have an interest in purchasing the
7 equipment. Attached hereto and marked as Exhibit "A" and incorporated herein by reference is a
8 true and correct copy of an exemplar solicitation letter in this regard. No serious response came
9 from this mailing.

10 5. Separately, I contacted the sale vice president at Pacmac, Inc. in Fayetteville,
11 Arkansas, a major manufacturer of produce packing equipment, and inquired if he knew of any
12 processors who might have an interest in the Defendant's equipment. He referred me to a company
13 in North Carolina that is building a frying plant. The manager of that company sent me a list of
14 equipment that he was looking to buy, none of which was among the Defendant's equipment
15 inventory.

16 6. We next solicited proposals from professional auctioneers to auction the equipment.
17 Two competing proposals were received to auction the Defendant's equipment. One of the
18 auctioneers, Ashman Company ("Ashman"), quoted a fixed price and assumed all of the risks of the
19 auction to be held on the Defendant's site in Gilroy on March 11, 2008. The competing bidder,
20 Martella Auction Co. Inc. ("Martella") declined to quote a fixed price auction although it believed
21 the Defendant's equipment would sell for \$600,000 at an auction if consolidated into an annually
22 scheduled auction it holds in Tipton, California in February. Martella would not guarantee a fixed
23 price, the proceeds from the sale would be net of certain costs to refurbish the equipment, would
24 require a move of the equipment to Tipton. In addition to the processing equipment, the Defendant
25 believes that it has ownership rights in certain irrigation pipes, but neither Ashman nor Martella were
26 able to provide a quotation for irrigation pipe because of Defendant's inability to locate or account
27 for the pipe it owns. In addition to the fixed price for the processing equipment, Ashman and
28 Defendant will split the proceeds of pipe sold at auction 50/50. It is not known at this time how

1 much pipe will be sold at auction. Because Martella was not willing to meet the fixed price quote of
2 Ashman and due to the other factors of timing and location of the auction, the Defendant and
3 Comerica agreed that Ashman was the best offer. Attached as **Exhibits "B" and "C"** respectively
4 are copies of the bids received from Ashman and Martella.

5 7. In a separate offer, the Defendant received an offer to purchase the equipment for
6 \$350,000. Again, this proposal was rejected due to the more favorable Ashman quote.

7 8. As to the sale of the "Gilroy Machine" and truck to Raymond Nava identified in the
8 stipulation, I am informed and believed that the Plaintiff's counsel, Kenneth Gorman, spoke to
9 Mr. Ashman who confirmed that \$60,000 is a "fair value" for these assets.

10 9. The Ashman auction is currently scheduled for March 11, 2008. Any delay of that
11 day will only add costs to sell what are largely farm tractors in various states of repair, older model
12 trucks and farm implements and customized processing equipment that has been partially dismantled
13 to accommodate the return of leased equipment. There is no recent appraisal of which I am aware
14 showing that this equipment in its present state is worth anything more than the auction estimates
15 provided by two experienced auction firms. Based on my experience, I believe that the sales to
16 Ashman and Nava represent the present fair market value for these assets.

17 I declare under penalty of perjury under the laws of the State of California, the foregoing is
18 true and correct and that this declaration is executed on March 4, 2008.

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20 /s/ Russell K. Burbank
21 RUSSELL K. BURBANK
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